



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 27, 2003

Ms. Ruth Reyes  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2003-0547

Dear Ms. Reyes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175532.

The El Paso Police Department (the "department") received a request for the complete case pertaining to a specified police report. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>1</sup>

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>2</sup> Section 58.007 provides that juvenile law enforcement records relating to conduct

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<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

that occurred on or after September 1, 1997 are confidential. *See* Fam. Code § 58.007. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We note that a "child" is defined in the Family Code as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). After carefully reviewing your representations and the information at issue, we are unable to determine whether any person involved in this matter as a suspect or arrestee is ten years of age or older and under seventeen years of age. Therefore, we cannot find that the submitted information concerns juvenile conduct that is encompassed by section 58.007. Accordingly, we conclude that the submitted information is not excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending criminal investigatory case. Based on our review of your representations and the information at issue, we find that the release of most of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

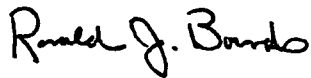
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 175532

Enc. Submitted documents

c: Mr. William A. Carrick  
4141 Pinnacle #105  
El Paso, Texas 79902  
(w/o enclosures)